

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1738 of 2023

Date	Order with signature of Judge
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For hearing of bail application

11.9.2023

Mr. Muhammad Nawaz advocate for the applicants
Mr. Zahoor Shah, Addl. PG along with SI Muhammad Ashique of P.S SSHIA.

Applicants Zaheer and Bashir seek post-arrest bail in F.I.R No.804/2023, registered under Sections 380/34 PPC at PS SSHIA, Karachi.

2. Accusation against the applicants is that they in collusion with factory watchman Asghar stole iron on 24.06.2023 to 28.06.2023 from the complainant's factory and threw the same iron to an adjacent plot, from where one Israr loaded the iron in the vehicle and sold out to scrape shop. The FIR of the incident was lodged with PS SSHIA, Karachi on 6.7.2023. Their bail plea has been declined by the Sessions Judge (Malir) Karachi vide order dated 21.07.2023 in Cr. Bail Application No. 3192/2023, on the premise that sufficient material was/is available on record to connect the applicants with the commission of the alleged offense of theft of iron/sirya from the factory of the complainant.

3. At the very outset, it has been argued by learned counsel for the applicants that the applicants have been falsely roped in the present case. Learned counsel has contended that the incident took place on 24.06.2023 and FIR was lodged on 06.07.2023 after an unexplained delay of 12 days, which creates serious doubt and the matter requires further inquiry. He has further argued that no specific role has been assigned to the applicants with the alleged offense as all the allegations leveled by the complainant are general and false; and, the alleged offense does not fall within the prohibitory clause of Section 497 Cr. P.C. Learned counsel has submitted that whether the applicants are liable to be prosecuted under Section 380 PPC in the facts and circumstances of the case which is debatable question and needs to be taken care of by the trial Court after recording of the evidence. Learned counsel further submitted that cases, not falling within the prohibitory clause; and the practice of sub-ordinate courts refusing bail in such cases on feeble grounds was/is illogical and uncalled for. Learned counsel further submitted that the alleged recovery has not been witnessed by an independent person which is a violation of Section 103 Cr. P.C. He lastly prayed for allowing the bail application.

4. Conversely, learned A.P.G for the State has opposed the bail application with the narration that the applicants/accused were nominated in the FIR with specific roles and the complainant himself caught hold of his employees/applicants/accused and handed over to police. He submitted that during interrogation the applicants/accused had disclosed that they in collusion with factory watchman Asghar had stolen iron from 24.06.2023 to 28.06.2023 from the complainant's factory and thrown the same iron to an adjacent plot, from where one Israr loaded the iron in the vehicle and sold out to scrape shop, they further disclosed in the interrogation that they had stolen 53/54 bundle of iron from complainant's factory and each bundle weighing about 100/110 kilograms. He next argued that applicant Zaheer led the police party at a plot, situated at Katchi Abadi, Allah Bux Goth, Scheme No.33, and recovered 3 bundles weighing about 300 kilos and handed them over to the police/Investigation officer who prepared such memo, as such it can be said that the material available on the record connects the applicants/accused with the commission of the offense. He further submitted that nothing is available on record to show that the complainant had acted malafidely with a single aim to implicate the present applicants/accused in this case. He prayed for the dismissal of the instant bail application.

5. On 09.08.2023 and 04.09.2023 notices were issued to the complainant through the SHO concerned, however, he has chosen to remain absent though served by the SHO.

6. I have heard learned counsel for the applicant/accused as well as learned APG for the State and perused the material available on record.

7. Tentative assessment of the record reflects that the alleged theft in the complainant's factory was committed somewhere between 24.06.2023 to 28.06.2023, whereas the complainant came to know about the alleged theft when he was informed by his employee and lodged such report with the police station on 06.07.2023, thus consultation and deliberation cannot be ruled out in such matter. The complainant in his report had only mentioned the commission of theft of the said iron through hearsay evidence as he did not see the applicants while committing the offense of theft of Iron, however, he produced the applicants to the police who on his say arrested the applicants without evidence, thus casting doubts over the contents of the report of the complainant.

8. No doubt, applicants are nominated in FIR; however, it is delayed for about 12 days, for which no plausible explanation has been furnished by the prosecution for such an inordinate delay. The offense, with which applicants stand charged for

Section 380 PPC, carries a maximum punishment of up to 07 years; hence, does not exceed the limits of the prohibitory clause of Section 497 Cr.P.C. The delay in criminal cases, particularly when it is unexplained, always presumed to be fatal for the prosecution. In the circumstances and because of dicta laid down by the Supreme Court of Pakistan in the case of TANVEER Versus The STATE and another (PLD 2017 SC 733), the case against applicants requires further inquiry within the meaning of subsection 2 to Section 497 Cr.P.C.

9. The case is being tried by a Judicial Magistrate after recording evidence of the parties, if the prosecution may succeed in proving its case against the accused, even then punishment of more than 03 years cannot be visualized. The alleged recovery of iron at the pointation of the applicant Zaheer prima-facie does not per se show his direct involvement in the commission of the alleged offense under section 380 PPC, but certainly makes it one of the further probes entitling the applicants to the concession of bail. On the aforesaid proposition, I am fortified with the decision of the Supreme Court in the case of Tariq Bashir and Others Versus The State, **PLD 1995 SC34**.

10. The application is accordingly accepted and the applicants/accused are admitted to bail in the sum of Rs. 50,000/- (Rupees Fifty Thousand) each with P.R. bond in the like amount to the satisfaction of the trial court.

11. The observations made in this order are tentative and should, in no way, prejudice the proceedings during the trial of the case.

12. The Trial Court is also hereby directed to make necessary arrangements for securing the attendance of the prosecution witnesses and conclude the trial within the shortest possible time under intimation to this Court through MIT-II.

JUDGE